

**HATFIELD BOROUGH
PUBLIC RECORDS ACCESS POLICY**

I. Purpose

The purpose of this Borough policy (the "Policy") is to ensure compliance with the Pennsylvania "Right to Know Law," 65 P.S. §§ 66.1 *et seq.*, as amended Act 2007-???, P.L. ---, No. ---, enacted February 14, 2008, and made effective on January 1, 2009, to provide access to public records of the Borough, to preserve the integrity of the Borough records, and to minimize the impact to the residents of the Borough regarding the resources utilized in the receipt and processing of public record requests that the retrieval and copying of public records.

It is the intent of this policy to carry out the Borough's powers and obligations under the "Right to Know Law" and the Borough, as lawful custodian of records, hereby adopts these rules governing the production of extracts, copies, photographs or Photostats of public information.

II. Definitions

"Financial record" - Any of the following: (1) Any account, voucher or contract dealing with the disbursement of funds by the Borough or the Borough's acquisition, use or disposal of services, supplies, materials, equipment or property; (2) the salary or other payments or expenses paid to an officer or employee of the Borough, including the name and title of the officer or employee; (3) a financial audit report, but not include work papers underlying an audit.

"Local agency" - Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity. The Borough is a local agency.

"Public Record" - A record, including a financial record, of the Borough that is not exempt under section 708 of the "Right to Know Law" any other Federal or State law or regulation or judicial order or decree; or is not protected by a privilege.

"Record" - Any document maintained by the Borough, in any form, whether public or not. A record in the possession of the Borough is presumed to be public; however, the presumption will not apply if the records is exempt under section 708 of the Right to Know Law or any other Federal of State law or regulation or judicial order or decree, or is protected by a privilege.

"Redact" - To black out information that is not public when the rest of the document is public and information cannot be separated; the partial denial of access coupled with the partial granting of access of a dingle document of public record.

"Requester" - A person that is a legal resident of the United States and requests a record pursuant to the Right to Know Law. The term includes an agency.

"Response" - The Borough's written notice to a requester granting, denying or partially denying access to a record.

III. Policy

Unless otherwise provided by law, a public record shall be accessible for inspection and duplication by a Requester. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for inspection and copying at the Hatfield Borough building following a response by the Borough Open Records officer during normal business hours, Monday through Friday, 8:00 a.m. to 4:00 p.m., with the exception of holidays.

It is the Borough's policy to require the presence of a Designated Borough Employee when files are examined by a Requester, and to charge a reasonable and equitable fee for file research and the copying of Borough files that are deemed to be a Public Record.

The Borough will not deny a requester access to a public record due to the intended use of the public record by a requester unless otherwise provided by law.

The Borough will not release information or documents that are exempt from disclosure under applicable statute or case law and will not disclose personal financial records or privileged documents.

IV. Procedure for Access to Public Records

Manner of request. All requests for access to Public Records must be submitted by the requester in writing on an official Request for Public Information form, and delivered in person or by mail or by facsimile; email and telephone requests will not be honored. Request forms are available at the Borough offices and can be downloaded from the Borough website at <http://www.hatfieldborough.com/>.

Direct requests to the Borough's open records officer below.

Christine Calhoun, Interim Open Records Officer
Hatfield Borough
401 S. Main Street
P.O. Box 190
Hatfield, PA 19440
FAX: (215) 855-2075

If you send your request to the wrong person, the Borough employees must forward it to the open records officer. This may delay the response, however, and should be avoided if possible.

Substance of request. A written request should identify or describe the records sought with sufficient specificity so that the Borough can determine which records you are seeking and must include the name and address to which the agency should address its response, as well as the date of the request. You do not have to tell the Borough why you want a particular record.

Request form. The Office of Open Records will develop a uniform form which must be accepted by Borough. The Borough will post the form at the Borough office and on its website.

The law does not require you to use the form to make a request, but your request must contain the information listed above.

Electronic Access. The Borough may make its public records available through any publicly accessible electronic means. If the public record is available through publicly accessible electronic means, the Borough will notify the requester in response to the written request for access to the public record. If access to a public record is routinely available by the Borough only by electronic means, the Borough shall provide access to inspect the public record at an office of the Borough.

Conversion of a Public Record to Paper. If a public record is maintained only electronically or in another non-paper media, the Borough shall, upon written request filed within 30 days following notification to the requester that the information is available through publicly accessible electronic means, duplicate the public record in printed form within five (5) days of receipt of the written request for conversion to paper.

Creation of a Public Record. When responding to a request for access, the Borough is not required to create a public record that does not currently exist, nor to compile, maintain, format or organize a public record in a manner in which the Borough does not currently compile, maintain, format or organize the public record.

Records that are Exempt from Access.

1. **Privileged records.** Records that are protected by a privilege, such as the attorney-client privilege or the doctor-patient privilege are not public.

2. **Records that are expressly made non-public by another law.** Records that are non-public under some other law (e.g., federal law makes student educational records non-public) are not public. However, if another statute makes a record public, then that record is public, and the Right to Know Law does not change that. For example, the Criminal History Record Information Act (CHRIA) expressly states that police blotters are public records and the Right to Know Law does not change this. The Right to Know Law does not affect access to criminal and civil court records or voter registration records.

3. **Right to Know Law exemptions.** Section 708 (b) of the Right to Know law contains the following categories of exemptions, which with limited exceptions, do not apply to financial records or aggregated data. The exemptions include the following:

- Records that, if disclosed, would result in the loss of Federal or state funds § 708 (b)(1)(i);
- Records that, if disclosed, would result in physical harm to an individual or would harm an individual's personal security § 708 (b)(1)(ii);
- Records that would jeopardize homeland security or public safety or preparedness § 708 (b)(2);
- Records that, if disclosed, would endanger the safety or security of a building, public utility, infrastructure, or information storage system § 708 (b)(3);
- Records that, if disclosed, would jeopardize computer security § 708 (b)(4);

- Medical, psychological and related records that would disclose individually identifiable health information § 708 (b)(5);
- Personal identification information, including social security numbers, personal financial information (an individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account of PIN numbers and other information relating to an individual's personal finances), driver's license numbers, and personal, home or cellular telephone numbers § 708 (b)(6)(i)(A); a spouses' name, marital status, beneficiary or dependent information § 708 (b)(6)(i)(B)
- Home addresses of law enforcement personnel and judges § 708 (b)(6)(i)(C);
- Certain personnel records relating to public employees, including applications of those not hired, academic transcripts, and information regarding discipline (except that final actions of an agency that result in demotion or discharge are public) § 708 (b)(7);
- Records relating to collective bargaining strategy or negotiations, except that final contracts and agreements and final awards and orders of arbitrators are public § 708 (b)(8);
- Working drafts of bills, resolutions, and policies § 708 (b)(9);
- Records reflecting internal, pre-decisional deliberations of agencies, including internal strategies. This exemption does not apply to records reflecting an agency decision, records requesting state funding/grant money, or results of public opinion surveys or polls. In addition, records presented to a quorum of an agency for public deliberation at a meeting subject to the Sunshine Act (e.g., board packets) are public records, with limited exceptions § 708 (b)(10);
- Trade secrets and confidential proprietary information § 708 (b)(11).
- Notes and working papers used by a public official or employee solely for that individual's own personal use § 708 (b)(12).
- Records that would disclose an agency donor, except under certain circumstances § 708 (b)(13);
- Unpublished academic materials § 708 (b)(14);
- Academic transcripts and examination materials § 708 (b)(15);
- Criminal investigative records. This exemption does not apply to information contained in a police blotter or in a traffic report (except for in-depth accident investigations) § 708 (b)(16);
- Non-criminal investigative records. This exemption does not apply to fines levied by agencies, license revocations, settlement agreements, or similar agency actions § 708 (b)(17);
- 911 records, except that time response logs are public, and agencies can disclose 911 recordings or transcripts if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure § 708 (b)(18);
- DNA and RNA records § 708 (b)(19);
- Autopsy reports, except that name, cause, and manner of death of a deceased individual are public § 708 (b)(20);
- Draft minutes of an agency until the next meeting and minutes of an executive session § 708 (b)(21);
- Real estate appraisals, environmental reviews, audits or evaluations relating to an agency's proposed lease, acquisition, or disposal of real property. The exemption no longer applies once the decision to lease, acquire or dispose of the property is made § 708 (b)(22);
- Library circulation records and certain archived materials § 708 (b)(23);

- Library archived and museum material, or valuable or rare book collections or document contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor and a condition of the contribution § 708 (b)(24);
- Records identifying the location of an archeological site or an endangered or threatened plant or animal species if not already publicly known § 708 (b)(25);
- Proposals relating to agency procurement or disposal of supplies, services or construction prior to the award of the contract or the opening and rejection of all bids. Financial information of a bidder or offeror § 708 (b)(26);
- Communications between an agency and its insurance carrier, administrative service organization, or risk management office. This exemption does not apply to contracts between agencies and these entities or to financial records relating to the provision of insurance § 708 (b)(27);
- Records identifying individuals who apply for or receive social services or disclosing the social services received by an individual § 708 (b)(28);
- Correspondence between a person and a legislator that would identify a person requesting assistance or constituent services. This exemption does not apply to communications from lobbyists § 708 (b)(29).
- Records identifying the name, home address, or date of birth of a child 17 years of age or younger § 708 (b)(30).

VI. Response to Written Requests

Borough's Response to Written Requests for Access. Upon receipt of a written request for access to a record, the Borough shall respond to a request as promptly as possible under the circumstances, which shall not exceed five business days.

Requests for Extensions. Under certain circumstances, such as when legal review or redaction are necessary, records are stored in a remote location, or where a request is extensive, it may take up to 30 more days to provide access to or copies of the records. The Borough will notify the requester of this "extension" and the reasons therefore within 5 business days of receipt of the original request.

Deemed denial. If the Borough does not respond within 5 business days, the request is deemed denied. If the Borough has sought an extension, but does not provide access within the 30 additional days, the request is deemed denied, unless the requester has agreed in writing to an extension. If your request is denied or deemed denied, you may file an appeal, as discussed below.

Grant of request for access. If the Borough's response grants a request for access to a public record, the Borough shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees, in addition to actual postage and reasonable duplication costs. The Borough will require prepayment where the fees are expected to exceed \$100.00.

Denial of Request. If the Borough denies the request for access to the records, the written response will include:

- A description of the record requested;
- The specific reasons for the denial, including citation of supporting legal authority;
- The name, title, business address and telephone number, and signature of The open records officer;
- The date of the response; and
- The appeals procedure.

Redaction. If the Borough determines that a public record contains information that is subject to access, as well as information that is not subject to access, the Borough will grant access to the information that is subject to access, and deny access to the information that is not subject to access.

If the information that is not subject to access is an integral part of the public records and cannot be separated, the Borough shall redact (strike out) from the public record that information which is not subject to access. The Borough shall not deny access to the public record if the information that is not subject to access can be redacted. Information that the Borough redacts in accordance with this sections is deemed a denial under the law.

The Borough has the discretion to release records that are exempt under Section 708 of the Law, if: 1) disclosure is not prohibited by some other law or by court order; 2) the record is not protected by a privilege; and 3) the agency head determines that the public interest in disclosure outweighs any need for confidentiality

Record Discard. If the Borough's response to a requester states that copies of the requested records are available for the requester to retrieve at the Borough offices and the requester fails to retrieve the records within 60 days of the response, the Borough may dispose of any copies which have not been retrieved and retain any fees paid to date.

VII. Administrative appeal.

Except as noted below, all denials or deemed denials from the Borough are appealable to the Pennsylvania Office of Open Records, an administrative agency within the Department of Community and Economic Development in Harrisburg:

Commonwealth of Pennsylvania
Attn: Terry Mutchler, Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Phone: 717-346-9903
Fax: 717-425-5343
Right to Know Request Email: RTK-OOR@state.pa.us
General Email: openrecords@state.pa.us

If the denial or deemed denial relates to access to criminal investigative records, the appeal must be filed with the District Attorney for Montgomery County.

Both offices will issue its own rules for the administrative appeals process.

Timing and Content of Administrative Appeal. Any appeal must be filed within 15 business days of the mailing date of a denial or within 15 business days of a deemed denial. The appeal must explain why you believe the requested record is a public record, legislative record, or financial record and must address any grounds stated by the agency for delaying or denying the request.

The Appeals officer shall make a final determination, which determination shall be a final order, and must provide a written explanation for the decision. and mail its decision to both the requester and the Borough within 30 days of receipt of the appeal, unless the requester agrees otherwise. Failure to issue the final determination within 30 days results in a deemed denial of the appeal. The Appeals officer may conduct a hearing prior to issuing a final determination.

VIII. Judicial Appeal

Either the requester or the Borough may appeal an Office of Open Records determination (or deemed denial) by filing a court action in the Court of Common Pleas of Montgomery County. The court action must be filed within 30 days of the mailing date of the final determination of the administrative appeals officer or to a deemed denial of the appeal.

Stay. A petition for review filed with the court of common pleas shall stay the release of documents until a decision of the court is issued.

IX. Fees

The following fees shall be due and be paid by any person or entity for access to public records:

- a) Postage - actual postage on any mailing made in response to a request.
- b) Duplication - The Borough shall impose reasonable fees to copy requested public records.
- c) Certification. The Borough shall impose reasonable fees for certification of the requested public records.